IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 37594 of 2007(A)

CMA.19/2007 of SUB COURT, MUVATTUPUZHA
OS.361/2007 of MUNSIFF COURT,MUVATTUPUZHA

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PETITIONER:

OUSEPH ABRAHAM, S/O.OUSEPH, AGED 84, PULPARAYIL HOUSE, KAKKOOR KARA, THIRUMARADY VILLAGE, MUVATTUPUZHA TALUK, RESIDING AT NEHRU ROAD, AYYAPPANKAVU, ERNAKULAM, REPRESENTED BY RAJU ABRAHAM, S/O.ABRAHAM, AGED 57, PULPARAYIL HOUSE, NEHRU ROAD, AYYAPPANKAVU, ERNAKULAM.

BY ADV. SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SMT.GEETHA P.MENON
SMT.V.DEEPA

RESPONDENTS:

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1. AUGUSTHY, S/O.OUSEPH, PULPARAYIL HOUSE, KAKKOOR KARA, THIRUMARADY VILLAGE, KOOTHATTUKULAM.

2. GIJI, S/O.AUGUSTHY, IN -DO-, -DO-.

3. SHAJI, S/O.AUGUSTHY, IN -DO-, -DO-.

4. GIMMY, S/O.AUGUSTHY, IN -DO-, -DO-.

5. GOMI, S/O.AUGUSTHY, IN -DO-, -DO-.

6. SAJI, S/O.AUGUSTHY, IN -DO-, -DO-.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 37594 OF 2007

Dated this the 18th day of December, 2007

J U D G M E N T

This writ petition is preferred against the order passed by the Subordinate Judge, Muvattupuzha, in C.M.A 19/2007 whereby the court below refused to interfere with the decision given by the Munsiff, The suit is one for injunction. Admittedly, the property belonged to one Ulahannan. The contention of the plaintiff is that he is in possession of the plaint schedule property for the last 49 years and he is claiming adverse possession against Ulahannan. The first defendant is his brother and others are his children. They contend that Ulahannan is not heard for more than 7 years and even if he is presumed to be dead, the plaintiff cannot have exclusive right or possession of the property but only a co-owner. The questions to be determined are:

(i) Whether Ulahannan is not heard for more than 7 years and if so, who are the legal representatives.

(ii) Whether the right is lost by adverse possession as the plaintiff claims to be in exclusive possession.

2. Adverse possession is a matter where the hostile animus is to be proved and which is the starting point of adverse possession is also a matter that the court has to consider. So, even if it is presumed that Ulahannan is not heard for more than 7 years, the larger question to be decided is regarding the factum of adverse possession. Until it is established, one cannot hold that the right of the 1st defendant will be lost by adverse possession.

I do not want to elaborate on the subject any further. But as the materials stands, it may not be correct on the part of this court to hold in favour of adverse possession and protect the possession of the plaintiff. Therefore, I do not find any illegality or irregularity in the orders of the court below and therefore the writ petition is dismissed.

But considering the facts and circumstances of the case, I direct the court blow to dispose of the matter as expeditiously as possible and not later than two months from the date of receipt of a copy of this judgment.

M.N.KRISHNAN, JUDGE

vps